

REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claims 1-3 have been cancelled, while claims 4-6 have each been made proper independent claims including the limitations of claim 1. In addition, the claims have been amended for clarity.

The Examiner has rejected claims 1, 2, 7 and 9 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 4,924,378 to Hershey et al. The Examiner has further rejected claim 3 and 10 under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. in view of U.S. Patent 6,496,802 to van Zoest et al. In addition, the Examiner has rejected claims 4 and 8 under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. in view of U.S. Patent 6,658,590 to Sicola et al. Moreover, the Examiner has rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. in view of U.S. Patent 5,440,719 to Hanes et al. Furthermore, the Examiner has rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Hershey et al. in view of U.S. Patent 6,542,468 to Hatakeyama. Additionally, the Examiner has rejected claim 11 under 35 U.S.C. 103(a) as being unpatentable over Sicola et al. in view of Hershey et al. The Examiner has moreover rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over Sicola et al. in view of Hershey et al., and further in view of Hanes et al. Finally, the Examiner has rejected claim 13 under 35

U.S.C. 103(a) as being unpatentable over Sicola et al. in view of Hershey et al., and in view of Hanes et al., and further in view of Hatakeyama.

The Hershey et al. patent discloses a license management system and license storage key in which an application program to be run on a computer must be assigned a license in the license storage key associated with the computer before it is permitted to run. In particular, the computer on which the application program is to be run, requests a license for the application program. The license storage key then searches for the appropriate license and responds to the computer when the license is found. As indicated at col. 5, lines 27-36, the computer includes a timer for enabling the computer to keep track of responses for which it is waiting. If a response is not received within the time set by the timer, then an error is sent to the computer.

The subject invention relates to, for example, a system for confirming which a user is authorized to playback a track that is found on a CD which contains a plurality of tracks. If the user is in possession of the CD, then other tracks should be available for the verifier to check. If the user is not in possession of the CD, then the other tracks are not available. Alternatively, the user may attempt to "trick" the system by downloading the other requested tracks. This would then be detected by the system due to the additional time required to search for, locate and download the

other requested tracks as opposed to the tracks merely being accessed on the CD.

The subject invention, as claimed in claim 7, includes "a renderer for receiving a plurality of data items corresponding to a data set, and for producing therefrom a rendering corresponding to a selected data item", "a verifier, operably coupled to the renderer, for precluding the rendering corresponding to the selected data item in dependence upon whether other data items of the plurality of data items are available to the renderer", "a timer, operably coupled to the verifier and the renderer, for measuring response times associated with responses to requests for the other data items from the renderer", and "wherein the verifier precludes the rendering based at least in part on an assessment of the response times".

As noted in MPEP 2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of

terminology is not required. In *re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

The Examiner indicates that the "renderer" as claimed in claim 7 is found in Hershey et al. in the abstract, lines 5-12, col. 1, lines 20-27, and col. 3, lines 22-29, i.e., the Examiner believes that the license storage key of Hershey et al. is equivalent to the "renderer" as claimed; that the "verifier" as claimed in claim 7 is found in Hershey et al. at col. 3, lines 40-64,, col. 4, lines 25-30, col. 5, lines 2-3, 8-11, 19, col. 6, lines 50-67; col. 7, lines 1-20, i.e., the Examiner believes that the microprocessor in the license storage key is equivalent to the "verifier" as claimed; and that the "timer" as claimed in claim 7 is found in Hershey et al. at col. 5, lines 27-36.

Applicant submits that the Examiner is mistaken at least with regard to the "renderer" and the "verifier". In particular, the renderer as claimed receives a plurality of data items corresponding to a data set, and renders a selected data item among the plurality of data items. The license storage key of Hershey et al. merely stores a plurality of licenses and searches these licenses upon a request from a computer terminal connected thereto. Applicant submits that the license storage key of Hershey et al. does not receive a plurality of data items corresponding to a data set, and does not render a selected data item. Further, the microprocessor in the license storage key does not "preclude the

rendering corresponding to the select data item in dependence upon whether other data items of the plurality of data items are available to the renderer". Applicant submits that there is nothing in the license storage key that corresponds to the "select data item" and the "other data items", both being part of the plurality of data items available to the renderer. Applicant submits that the microprocessor of the license storage key merely searches the memory of the license storage key for a particular license requested by a computer terminal attached to the license storage key.

The van Zoest et al. patent discloses a system and method for providing access to electronic works, in which, in one embodiment, a ripper 215 randomly extracts portions or "samples" of the raw data from each track on the CD, these samples being identified randomly, for verifying the authorization of the user.

Claim 10, which depends from claim 7, states "the verifier is configured to randomly select the other data items".

While van Zoest et al. arguably shows the random selection of samples, Applicant submits that there would be no incentive for combining this feature with Hershey et al. in that the object of the license storage key in Hershey et al. is to provide the requested license, not a randomly selected license.

As noted in MPEP 2143.01, "Obviousness can only be established by combining or modifying the teachings of the prior

art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

The invention, as claimed in claim 4, includes "a verifier for determining an authorization to process protected material, based on one or more responses to one or more requests", "a timer for measuring response times associated with the one or more responses to the one or more requests", "the verifier determines the authorization based at least in part on an assessment of the response times", and "the response times are correlated to a physical proximity between a first source of the one or more requests and a second source of the one or more requests".

The Sicola et al. patent discloses a controller-based transaction logging system for data recovery in a storage area network "which provides a completely redundant configuration including dual Fibre Channel fabric links interconnecting each of the components of two data storage sites,..." (Abstract, lines 1-3). Sicola et al. notes, at col. 11, lines 14-16, that a "drawback to

synchronous operation is that long distances between sites mean longer response times, due to the transit time,...."

Applicant submits that there is no incentive for combining Sicola et al. with Hershey et al. in that the timer in Hershey et al. is merely to prevent the system from searching the license storage key for a license for an indefinite amount of time, i.e., if the license is not found within a certain amount of time, then the license is not there. The timer is associated with the requesting computer terminal which is either directly connected to the license storage key or is connected via the network to a central license storage key. As such, there is no interest in correlating the response times "to a physical proximity between a first source of the one or more requests and a second source of the one or more responses".

The invention, as claimed in claim 5, includes "a verifier for determining an authorization to process protected material, based on one or more responses to one or more requests", "a timer for measuring response times associated with the one or more responses to the one or more requests", "the verifier determines the authorization based at least in part on an assessment of the response times", and "the assessment of the response times forms an assessment of whether the one or more responses were communicated via a network connection".

The Hanes et al. patent discloses a method simulating data traffic on network in accordance with a client/server paradigm, in which it is indicated that with a significant increase in the nodes being modeled, "the increased traffic will slow down the overall system response time from the server to the client in accordance with the model of the network."

The subject invention is ascertaining whether the user of the system has the entire data source (e.g., CD) physically proximate to the system for responding to the requests, or whether the user is simulating the data source by relying on a connection to a network (e.g., the Internet) to supply the responses to the request. This "network" connection will invariably take a significantly longer period of time to retrieve the responses to the request than needed to access response to the request from the data source that is physically proximate to the system.

Applicant submits that there is no incentive for combining Hanes et al. with Hershey et al. in that Hershey et al. is not concerned with varying amounts of access time, and the physical proximity issue. The only way that this could come about is through hindsight reconstruction of the claimed invention.

The invention, as claimed in claim 6, includes "a verifier for determining an authorization to process protected material, based on one or more responses to one or more requests", "a timer for measuring response times associated with the one or more

responses to the one or more requests", "the verifier determines the authorization based at least in part on an assessment of the response times", and "the assessment of the response times forms an assessment of whether the one or more responses were immediately available, or whether the one or more responses were a result of a determination".


The Hatakeyama patent an apparatus method and storage medium for autonomous selection of a path by tuning response times, in which "The actual response time at this time is normally actual response times obtained from records having identical paths in the actual response time table."

Applicant fails to see how Hatakeyama is relevant to the present invention or with Hershey et al. In particular, in the subject invention, the responses would be immediately available if the user of the system possessed the entire data set (e.g., CD). However, if the user did not possess the entire data set, then the requested data would have to be acquired via some form of determination which would take a significantly longer period of time than if it were immediately available.

In view of the above, Applicant believes that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicant believes that this application, containing claims 4-10, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by 
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